



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

SPR-102907-00

MAR 14 2000

MEMORANDUM FOR DIRECTOR

CP:EX:ST:E

Office of Excise Taxes

FROM:

Chief, Branch 8 *Richard A. Kordy* CC:DOM:P&SI:8
Assistant Chief Counsel
(Passthroughs and Special Industries)

SUBJECT:

Application of the one claim rule

This responds to your memorandum in which you ask whether more than one claim for a fuel tax refund or credit may be filed by a claimant for any particular period. If you have any questions about this, please contact Frank Boland at (202) 622-3130.

The Code contains several provisions that, under certain conditions, prohibit a claimant from filing more than one claim for any particular period. These provisions (collectively "the one claim rule") are described below.

Please note that the one claim rule only applies to claims under §§ 6420, 6421, and 6427 by ultimate purchasers, registered ultimate vendors, and gasoline blenders. The rule does not apply to claims under § 6402 by persons that paid tax to the government (or, in the case of certain gasoline wholesale distributors, persons that are treated as having paid tax to the government).

REFUND CLAIMS

Refund claims by ultimate purchasers. Sections 6421 and 6427 (other than 6427(f) and (l)(5)) allow certain claims to be made by ultimate purchasers of taxed gasoline, diesel fuel, aviation fuel, and kerosene used for certain nontaxable uses. Under prescribed conditions, these claims may be made on Form 8849 or Form 720 (Schedule C) for quarters of the claimant's income tax year. Section 6427(i)(2)(A) provides, however, that only one claim may be filed under §§ 6421 and 6427 with respect to gasoline, diesel fuel, aviation fuel, and kerosene used during any one quarter.

Please note that claims under § 6421 or § 6427 that are made on Form 720 (Schedule C) are subject to the one claim rule relating to refunds under

PMTA: 00354

§§ 6427(i)(2), (3) and (4). Thus, a timely claim on Form 8849 that would be barred by the one claim rule would also be barred if taken on Form 720 (Schedule C).

Refund claims by gasohol blenders. Section 6427(f) allows certain claims by gasohol blenders with respect to fully-taxed gasoline that is used to produce gasohol. Under prescribed conditions, these claims may be made for any period that is not less than one week. Claims may be made on Form 8849 or Form 720 (Schedule C). Section 6427(i)(3)(A) provides, however, that only one claim may be filed with respect to gasohol produced during any period.

Refund claims by registered ultimate vendors. Section 6427(l)(5) allows certain claims by registered ultimate vendors of diesel fuel and kerosene sold for use on a farm for farming purposes or by a state or local government and by registered ultimate vendors of kerosene sold from a blocked pump for nontaxable uses. Under prescribed conditions, these claims may be made for any period that is not less than one week. Claims may be made on Form 8849 or Form 720 (Schedule C). Section 6427(i)(4)(A) provides, however, that only one claim may be filed with respect to diesel fuel or kerosene sold during any period.

Valid amended refund claims. Under Rev. Ruls. 62-174, 1962-2 C.B. 341, and 63-205, 1963-1 C.B. 622, an amended claim under § 6421 or 6427 that would otherwise be barred by the one claim rule is not barred if the original claim is still pending. However, once the original claim has been extinguished by payment to the claimant, a later claim is in fact a new claim and may be barred by the one claim rule.

ANNUAL CLAIMS

Sections 6420(g), 6421(i), and 6427(k) provide that refunds may be made only to certain persons not subject to income tax, and to persons that qualify for a refund under §§ 6427(i)(2), (3), and (4). Others must claim a credit against income tax under § 34. Section 34 provides that a credit against income tax is allowable in an amount otherwise payable under §§ 6420, 6421, and 6427 without regard to §§ 6420(g), 6421(i), and 6427(k). However, these income tax claims are not allowable with respect to any amount for which a timely refund claim has been filed under § 6427(i)(2), (3), or (4) on Form 8849 or Form 720 (Schedule C). Also, §§ 6420(b), 6421(d)(1), and 6427(i)(1) limit the number of income tax claims that may be filed by a claimant for a single income tax year.

Annual claims are made on Form 4136. Form 4136 combines many claims on a single form. For purposes of the one claim rules of §§ 6420(b), 6421(d)(1), and 6427(i)(1), these income tax claims are divided into seven claim groups based on the type of fuel and the use of that fuel. Once a claimant files a Form 4136 with a

claim for one group, the claimant cannot file an additional claim for that same group for that same tax year. The claimant can, however, file an amended return with a claim for another group. Note that the one claim rule does not apply to gasoline used to produce gasohol. The groups are as follows:

Group I: Gasoline (including aviation gasoline and gasohol) used on a farm for farming purposes. Section 6420(a)

Group II: Gasoline (including aviation gasoline and gasohol) used in an off-highway business use and in commercial aviation. Section 6421(a).

Group III. Gasoline (including gasohol) used in certain intercity and local buses and buses transporting students and employees of schools. Section 6421(b).

Group IV. Gasoline (including aviation gasoline and gasohol) that was exported, used in a boat engaged in commercial fishing, or used in foreign trade. Section 6421(c).

Group V. Undyed diesel fuel, undyed kerosene, liquefied petroleum gas used in certain intercity and local buses and buses transporting students and employees of schools. Section 6427(b).

Group VI. Undyed diesel fuel, undyed kerosene, aviation fuel used for certain nontaxable uses including use as heating oil and off-highway business use. This group also includes undyed diesel fuel and undyed kerosene sold by registered ultimate vendors. Section 6427(l).

Group VII. Aviation gasoline used in certain helicopter and fixed-wing air ambulance uses. Section 6427(d).

For a description of these groups that is keyed to the lines on Form 4136, see page 7 of Publication 378 (Rev. November 1999).

EXAMPLES

The following examples illustrate the application of the one claim rule:

Example 1. T, a calendar year income taxpayer, is a telephone company. On April 5, T files an otherwise valid refund claim on Form 8849 with respect to undyed diesel fuel it bought and used in an off-highway business use during its first quarter. On May 10, the IRS paid this claim to T. Then, on May 25, T files an otherwise valid refund claim on Form 8849 with respect to gasoline it bought and used in an

off-highway business use during its first quarter. T inadvertently had omitted these gallons from its April 5 refund claim.

Because T had previously filed a refund claim for diesel fuel as an ultimate purchaser under § 6427, T's May 25 refund claim for gasoline as an ultimate purchaser under § 6421 is not allowable under the one claim rule of § 6427(i)(2)(A). Also, T could not claim the gasoline gallons on any later refund claim on Form 8849. But see Example 3 for a discussion of how T can claim the gasoline gallons on its income tax return.

Example 2. The facts are the same as Example 1 except that instead of filing the claim relating to the gasoline on Form 8849 on May 25, T files the claim on May 31 with its quarterly excise tax return on Form 720 (Schedule C).

Because T had previously filed a refund claim for diesel fuel as an ultimate purchaser under § 6427, T's May 25 refund claim for gasoline as an ultimate purchaser under § 6421 is not allowable under the one claim rule of § 6427(i)(2)(A). The fact that T made the second claim on Form 720 (Schedule C) instead of Form 8849 does not make a difference. Also, T could not claim the gasoline gallons on any later refund claim on Form 720 (Schedule C). But see Example 3 for a discussion of how T can claim the gasoline gallons on its income tax return.

Example 3. The facts are the same as Example 1 except that instead of filing the claim relating to the gasoline on Form 8849 on May 25, T files the claim with its original income return for that year on Form 4136.

T's claim on its income tax return is not barred by the one claim rule of § 6421(d)(1) because T had not previously filed a claim on Form 4136 for Group II for that year.

Example 4. UV, a calendar year income taxpayer, is a registered ultimate vendor of diesel fuel and a gasohol blender. On July 17, UV files an otherwise valid refund claim on Form 8849 with respect to undyed diesel fuel it sold for use on a farm for farming purposes during the period June 29 through July 14. On August 1, the IRS pays this claim to UV. Then, on August 15, UV files an otherwise valid refund claim on Form 8849 with respect to fully-taxed gasoline it bought and used in the production of gasohol during the period June 29 through July 14. UV inadvertently had omitted these gallons from its July 17 refund claim.

Because UV's August 15 claim is a claim relating to gasohol blending rather than sales of diesel fuel as an ultimate vendor, this claim is not barred by the one claim rule of § 6427(i)(4)(A).

Example 5. X, a calendar year income taxpayer, is a commercial airline. On its 1998 income tax return (filed in 1999), X made a valid claim with respect to taxed aviation fuel that X bought and used in commercial aviation; attaching a Form 4136. X made no other claims on Form 4136. Then, in 2000, X filed an amended 1998 return; again attaching a Form 4136. On this second Form 4136 for 1998, X made a claim with respect to diesel fuel that it bought and used in 1998 in an off-highway business use.

Both of X's claims are claims under Group VI. Thus, the amended claim with respect to diesel fuel is barred by the one claim rule of § 6427(i)(1).

Example 6. The facts are the same as Example 5 except that X's amended claim is with respect to gasoline (rather than diesel fuel) used in an off-highway business use.

X's claim with respect to aviation fuel is a claim under Group VI. X's claim with respect to gasoline is a claim under Group II. Thus, the amended claim with respect to gasoline is not barred by the one claim rule of § 6421(d)(1).